IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3575 OF 1992

Arjun Kamble .Petitioner

Vs.

The Mun. Corporation of
Gr. Bombay and Ors. . ... Respondents

Mr. R. M. Nakhwa, Advocate for the Petitioner.

Mr. A. J. Bhor, Advocate for Respondent No.1.

CORAM : D. G. DESHPANDE, J.

DATE : SEPTEMBER 19, 2006.

P.C.

. Petition is restored and heard on merits.

Heard Mr. R. M. Nakhwa, Advocate for the Petitioner. Respondent No.2 is the contesting Respondent. Nobody is present for Respondent No.2.

Advocate for Respondent No.1 is present.

2. Petitioner and Respondent No.2 are brother and sister. The suit property, which are the premises of the Corporation were allowed to their grand parents. The husband of Respondent No.2 is alleged to have cheated the Petitioner and got the documents transferred in his name and after his death the sister has claimed those from the same rights.

3. Counsel for Petitioner suggested that even from the report of Inquiry officer **Exh. C** of this petition, it is clear that this Petitioner who is opponent No.2 before the Inquiry Officer, was

admittedly a tenant in the premises for about last 40 years, and therefore what is to be done is for the Corporation to treat both the Petitioner and Respondent No.2 as co-tenants of the said property.

4. In the facts and circumstances of the case, the suggestion is most proper. Even in the petition i.e. in the title clause of this petition the address of Petitioner and Respondent No.2 is shown the same. No affidavit in reply is filed by Respondent No.2 to deny the contention of the Petitioner in that regard and even looking to the fact that Petitioner and Respondent No. 2 are real brother and sister, this petition has to be allowed to certain extent. It is true that either the Petitioner or the Respondent No.2, somebody has to file civil suit for declaration of claim. Till that is done, Corporation has to recognise Petitioner and Respondent No.2 as lawful occupant of the premises and therefore, I pass the following order.

ORDER

i) The petition is allowed.

ii) This petition which is directed against the

order of City Civil Court, by which the appeal of the present Petitioner was dismissed. Hence, the order of dismissing the appeal is set aside. It is clarified that within a period of three years from today, either Petitioner or Respondent No.2 should file civil suit for assertion of their claim in respect of suit property, on all the grounds, that are referred and raised before the Inquiry Officer.

iii) Till the said suit is disposed of or decided, the Respondent No.1 should recognise the Petitioner as lawful occupant of the said premises, alongwith Respondent No.2. The Petitioner and Respondent No.2 both are liable to pay outgoings of the Corporation in respect of the suit premises. In case of death of either Petitioner or Respondent No.2, Corporation shall be at liberty to follow procedure, according to law.

iv Petition is disposed of.

[D. G. DESHPANDE, J.]